

**WISCONSIN SUPREME COURT CALENDAR**  
**November 8, 2001**  
**10:45 a.m.**

00-0971-CR      State v. Bradley J. Vorburger

*This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a ruling of the Dane County Circuit Court, Judge Steven D. Ebert presiding.*

In this case, the Wisconsin Supreme Court will decide whether police may detain non-occupants of a motel room while the police await a warrant to search the room.

Here is the background: In July 1997, a motel employee entered a motel room and saw a sizable bag containing what he thought was marijuana. Police were contacted and began working on obtaining a search warrant while they reported to the motel. Motel records indicated the room was rented by Cory Cramer. The vehicle license plate number associated with the motel room traced back to Peter Kokoros.

At approximately 9:20 p.m., as police staked out the room, they saw Cramer, Bradley Vorburger, and Amerie Becker walking down the hallway toward Cramer's room. The police told the three to stay where they were, and handcuffed each of them. They told them they were not under arrest, but were being detained pending a further investigation. The search warrant arrived at 10:05 p.m., and an officer took Cramer into a nearby room and read it to him. The officers then entered Cramer's room, smelled the strong odor of marijuana, and found a large amount of the drug along with a digital scale.

Shortly after 10:30 p.m., an officer took Becker into another room, read her a Miranda warning, and began to question her. Becker admitted that she had a small amount of marijuana in the apartment she shared with Vorburger, and she consented to a search of the apartment. Police then accompanied Becker to the apartment, where they found marijuana, powder cocaine, hallucinogenic mushrooms, blunts (cigars packed with marijuana), a postal scale, and about \$2,000 cash.

Meanwhile, at the hotel, another officer read Vorburger his Miranda rights and asked him some questions. He then consented to a search of his car, where police found more marijuana. Vorburger remained handcuffed until about 11:45 p.m.

Vorburger was eventually charged with several crimes, and he moved to suppress the evidence against him, including the drugs obtained from his vehicle and from the apartment he shared with Becker. The trial court denied the motion, and Vorburger pleaded no contest and was convicted of possession of cocaine with intent to deliver, party to a crime.

Vorburger appealed, arguing that the evidence police had seized should be suppressed because he and Becker had consented to the searches while they were being detained without justification. The State countered that the consents were valid because Vorburger and Becker were not under arrest, but merely subject to temporary investigative detention. The Court of Appeals agreed with Vorburger, reversing his conviction and ruling that he and Becker had been subject to unlawful arrests and therefore their consent to the warrantless searches was not valid.

In arriving at its conclusion that Vorburger and Becker were, for all intents and purposes, under arrest, the Court of Appeals used a test set forth in a 1991 Wisconsin Supreme Court case<sup>1</sup>. This test helps courts determine whether a detention constitutes an arrest by asking whether, under the totality of the circumstances, a reasonable person in the defendant's position would have considered himself or herself to be in custody, or to be free to leave, given the degree of restraint imposed by police. In this case, given the handcuffs, the order to everyone to stay where they were, and the officers' refusal to let Becker go to the bathroom by herself, the court determined that the detention constituted an arrest. The court then determined that the officers lacked probable cause to arrest Vorburger and Becker, noting that the officers had no information linking them to Cramer's room.

The Supreme Court will decide whether the evidence against Vorburger and Becker was properly suppressed.

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<sup>1</sup> State v. Swanson, 164 Wis.2d 437, 475 N.W.2d 148